

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Margaret Ann Behrens,

Complainant,  
vs.

Will Rossbach & Committee,

Respondents.

ORDER FINDING  
NO PRIMA FACIE VIOLATION AND  
DISMISSING COMPLAINT

On March 22, 2006, Margaret Ann Behrens filed a Complaint with the Office of Administrative Hearings alleging Will Rossbach and his campaign committee violated Minn. Stat. §§ 211B.04 and 211B.06 by preparing and disseminating false campaign material and campaign material that lacked the required disclaimer.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on March 22, 2006, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint was sent by United States mail to the Respondent on March 22, 2006.

After reviewing the Complaint and the attached documents, and for the reasons set out in the attached Memorandum, the Administrative Law Judge finds that the Complaint fails to set forth prima facie violations of Minn. Stat. §§ 211B.04 or 211B.06.

**ORDER**

IT IS ORDERED:

That the Complaint filed by Margaret Ann Behrens against Will Rossbach & Committee is **DISMISSED**.

Dated: March 24, 2006

/s/ Steve M. Mihalchick by KDS  
STEVE M. MIHALCHICK  
Administrative Law Judge

## NOTICE

Under Minn. Stat. § 211B.36, subd. 5 this Order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § 14.63 to 14.6.

## MEMORANDUM

The Respondent is currently a member of the Maplewood City Council. He was first elected to the City Council in 2003. Prior to that, he served approximately 15 years on the Maplewood Planning Commission. In November of 2005, the Respondent ran unsuccessfully for Mayor of Maplewood. The Complaint alleges that the Respondent and/or his campaign committee violated Minn. Stat. §§ 211B.04 and 211B.06 by preparing and disseminating false campaign material and campaign material that failed to have the proper disclaimer. The allegations refer to Respondent's unsuccessful campaign for Mayor in November of 2005, and to a special election for City Council in February of 2006, in which the Respondent endorsed City Council candidate Dale Trippler.

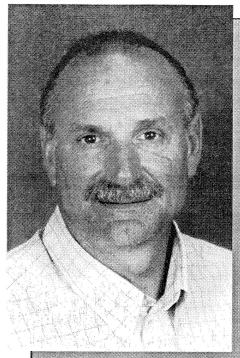
### Exhibit A – Campaign brochure

Sometime prior to the November 2005 election, the Respondent prepared and distributed a campaign brochure on an 8 ½ x 11 piece of paper folded into thirds. A scanned copy of the front panel of Respondent's brochure appears below:

Exhibit A

Will  
**Rossbach**

Mayor of  
Maplewood



***Will Power for  
Maplewood***

**willformayor.com**



The Complaint alleges that the phrase “Will Rossbach Mayor of Maplewood” falsely implies that the Respondent is currently the mayor of Maplewood. The Complainant contends that by this brochure, Respondent misrepresented himself to be the incumbent and that doing so gave him an unfair advantage. In addition, the Complainant claims to have a voice mail message from “a citizen of Maplewood who describes Respondent as the incumbent Mayor of Maplewood and that she had a discussion with him when he knocked on her door while he was running for election.”<sup>1</sup>

The Administrative Law Judge concludes that the Complainant has failed to state a prima facie violation of Minn. Stat. § 211B.06 with respect to this allegation. The statement that must be proved false is not necessarily the literal phrase published but rather what a reasonable reader would have understood the author to have said.<sup>2</sup> When viewing the statement in the context of the entire brochure, a reasonable reader would not have understood that Respondent was holding himself out to be the current Mayor of Maplewood. The brochure is campaign material. It is clear that Respondent is running for mayor. Respondent’s website URL, “willformayor.com” is written on the front and back panels and the phrase “Vote Will Rossbach” appears on an interior panel. In addition, on the second panel, under the heading “Will’s Qualifications,” Respondent states that he has “served on the Maplewood Planning Commission for the last 15 years and the City Council for 2 years.” The text of the brochure makes clear that Respondent is a candidate for mayor and not the incumbent.

In *Miske v. Benedict*,<sup>3</sup> the Minnesota Supreme Court considered a similar complaint involving a candidate running for constable at large for the city of St. Paul. As part of his campaign, the candidate prepared and distributed cards with the following statement: “BENEDICT G. FISCHER 1443 Thomas St. CONSTABLE AT LARGE.” His opponent alleged, among other things, that the candidate had, by virtue of these cards, held himself out to be the incumbent constable. The Court rejected this allegation and explained:

“It is extremely difficult to deduce from the words on this card that defendant was holding himself out as an incumbent. The cards were circulated at election time. Certainly few, if any persons would take the card to be a professional calling card as distinguished from a campaign card.”<sup>4</sup>

Likewise, with Respondent’s campaign brochure, the ordinary reader would not conclude that Respondent was claiming to be the current Mayor of Maplewood. Rather, the text of the brochure and the fact that it is being

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<sup>1</sup> Complaint attachment pp. 1-2.

<sup>2</sup> *Jadwin v. Minneapolis Star and Tribune*, 390 N.W.2d 437, 441 (Minn. App. 1986), citing *Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970). See also *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996).

<sup>3</sup> 259 N.W. 18, 193 Minn. 514 (Minn. 1935).

<sup>4</sup> *Id.* at 19.

circulated at election time make clear that Respondent is running for the position of mayor. In addition, the fact that “a citizen of Maplewood” identified Respondent as the incumbent is irrelevant to the allegation that Respondent prepared and distributed false campaign material. Oral statements (particularly those not made by the Respondent) are not campaign material within the meaning of Minn. Stat. § 211B.01, subd. 2, and 211B.06. The Administrative Law Judge concludes that the Complainant has failed to state a prima facie violation of Minn. Stat. § 211B.06 with respect to the phrase “Will Rossbach Mayor of Maplewood.” The phrase is not a false statement of fact. This allegation is dismissed.

### **Exhibit B – Campaign post card**

Sometime prior to the September 13, 2005 primary election, the Respondent prepared and distributed a campaign post card. The front side of the card contains the following phrases: “Get Some Will Power. Will Rossbach for MAYOR.” A scanned copy of the backside of the postcard appears below:



DEAR ANNA MAE, Through my 16 years of serving Maplewood, I have lead many efforts to improve both the protections we have in place for single family neighborhoods and the environment. I've done this by adding and changing ordinances and codes. My voting record also clearly reflects these positions. I have worked to make sure that in these efforts and others that we spent your money wisely using the thought that our programs must be both efficient and effective.

***Get Some Will Power!***

© 2005 GCU 1245-M

Prepared and paid for by Volunteers for Rossbach, 1386 E Co. Rd C Maplewood.

**Continue to protect our environmental resources.**

**Continue a strong program of city services with fiscal responsibility**

**Work for targeted redevelopment**

**Work to mitigate traffic impacts in residential neighborhoods**

**Continue Maplewood's leadership in life cycle and affordable housing.**

Exhibit B

The backside of the postcard discusses Respondent's accomplishments during his “16 years of serving Maplewood” and lists Respondent's goals. Written at an angle in the background of the post card in a faint light blue color is the phrase “Maplewood Mayor.”

The Complaint alleges that by placing the phrase “Maplewood Mayor” in the background of the post card, the Respondent gave the false appearance of being the current and incumbent Mayor of Maplewood. Specifically, the Complaint states that the Respondent led people to believe he is the current Mayor “through the subliminal blue water mark.” In addition, the Complainant

alleges that the phrase "Through my 16 years of serving Maplewood" falsely implies that Respondent has been on the City Council for 16 years, when in fact he has only been a Councilmember for two years. The Complainant points out that the Respondent could only "change ordinances and codes" (as he claims on the postcard) while on the Council and not as a member of the Maplewood Planning Commission. Thus, the Complaint alleges that the Respondent's failure to distinguish between his two years on the Council and 14 years on the Planning Commission renders false the statement: "I've done this by adding and changing ordinances and codes" because it implies he has had the authority to add and change ordinances and codes for 16 years.

The Administrative Law Judge concludes that the Complainant has failed to state a prima facie violation of Minn. Stat. § 211B.06 with respect to these allegations. First, the phrase "Maplewood Mayor" is not a false statement of fact with respect to Respondent's political character or acts. The phrase standing alone in the background of the postcard does not state or imply that the Respondent is the current Maplewood Mayor. Moreover, the postcard clearly states on the front side that Respondent is running "for Mayor." A reasonable reader would not read the phrase "Maplewood Mayor" in the background of the postcard as stating that the Respondent was the incumbent mayor. As for the second allegation, the Administrative Law Judge concludes that the statement "I have done this by adding and changing ordinances and codes" is not a false statement of fact because Respondent has added and changed ordinances and codes as a City Council member. While the failure to state clearly that Respondent has only had the authority to add or change ordinances for two years may be confusing or even misleading, it does not render the statement false. These allegations are dismissed.

### **Exhibit C – Letter endorsing Dale Trippler**

The Complaint alleges that Respondent failed to include the proper disclaimer on a letter sent in his name endorsing Dale Trippler for City Council in the February 28, 2006 special election. The Complaint also alleges that the following statements in the letter regarding newly elected Mayor Diana Longrie is false:

My concern is with the inexperience of the newly elected officials. Diane and Eric have very little time spent in city processes and meetings. I believe that it would be a mistake to elect another candidate that has spent no time in being involved with City of Maplewood's planning or processes.

According to the Complainant, Mayor Longrie has been very involved in the community of Maplewood and was the Chair of the Maplewood Community Design Board prior to her mayoral bid.

With respect to the disclaimer, the Administrative Law Judge concludes that the Complaint fails to state a prima facie violation of Minn. Stat. § 211B.04. Pursuant to that statute, a person who participates in the preparation of

campaign material must include the name and address of “the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided” in section 211B.04(b). The letter is signed by the Respondent, includes the name and address of Dale Trippler, and the name of Mr. Trippler’s committee, “Friends of Trippler.” The purpose of the disclaimer statute is to identify to voters who or what committee prepared, disseminated and paid for the campaign material at issue. Although the letter fails to include the precise phrase “prepared and paid for by,” the Administrative Law Judge concludes that the identifying information in the letter is substantially in the form required by Minn. Stat. § 211B.04 and this allegation is dismissed.<sup>5</sup>

The Administrative Law Judge also concludes that the Complaint fails to state a prima facie violation of Minn. Stat. § 211B.06 with respect to the statements concerning Mayor Longrie’s lack of experience. The statements reflect Respondent’s opinion and are not factual statements that may be proven true or false. Minn. Stat. § 211B.06 is directed against false statements of fact and not opinions. This allegation is dismissed.

**S.M.M.**

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<sup>5</sup> See, *Mastrud v. Ellison*, Order of Dismissal, OAH Docket No. 12-0320-16153-CV (September 21, 2004); *Wagner v. Heidgerken*, Order of Dismissal, OAH Docket No. 15-0320-16176-CV (October 5, 2004).